

EXHIBIT A

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

ELIZABETH A. HATFIELD,

Plaintiff,

v.

MERRICK BANK,

Defendant.

Civil Action No. 14-C-347

14-0-347
2014 DEC 5 PM 2:23
CIRCUIT COURT
OHIO COUNTY
MERRICK BANK

COMPLAINT

1. Plaintiff, Elizabeth A. Hatfield, is a consumer residing in West Virginia.
2. Plaintiff, Elizabeth A. Hatfield, is a person who falls under the protection of Article 2 of the *West Virginia Consumer Credit and Protection Act* (herein "WVCCPA") and is entitled to remedies set forth in Article 5 of the WVCCPA.
3. Defendant, Merrick Bank (herein "Merrick"), is a bank insured and regulated by the FDIC, with its principal address at 10705 South Jordan Gateway, Suite 200, South Jordan, UT, 84095, and conducts business at various locations throughout the United States of America.
4. Defendant, Merrick, is a debt collector engaging directly or indirectly in debt collection within the State of West Virginia, including Ohio County, West Virginia.
5. After Plaintiff, Elizabeth A. Hatfield, became in arrears upon the indebtedness to Defendant, Merrick, Defendant began to engage in collection of such indebtedness through the use of telephone calls placed to Plaintiff, Elizabeth A. Hatfield.

6. On or about July 21, 2010, Plaintiff, Elizabeth A. Hatfield, retained the undersigned counsel to represent her interest in connection with consumer indebtedness on which she had become in arrears.

7. On or about July 21, 2010, Plaintiff, Elizabeth A. Hatfield's attorney sent correspondence to Merrick Bank, requesting validation of debt and advising Merrick Bank to cease and desist all telephone calls and correspondence to Plaintiff, Elizabeth A. Hatfield, with regard to the above referenced debt. A copy of said correspondence is attached hereto as **Exhibit A**.

8. On or about July 26, 2010, Merrick Bank received a copy of correspondence to Merrick Bank, requesting validation of debt and advising Merrick Bank to cease and desist all telephone calls and correspondence to Plaintiff, Elizabeth A. Hatfield, with regard to the above referenced debt, according to certified mail return receipt, attached as **Exhibit B**.

9. On or about August 2, 2010, Defendant, Merrick Bank, sent correspondence to Plaintiff, Elizabeth A. Hatfield's attorney, acknowledging receipt of the correspondence attached as Exhibit A, and stating "we will cease communication with you regarding your account". A copy of said correspondence is attached hereto as **Exhibit C**.

10. Thereafter, Defendant and its authorized agents caused a telephone call to be placed to the residence of Plaintiff, Elizabeth A. Hatfield.

11. Thereafter, Defendant and its authorized agents continued to cause telephone calls to be placed to the residence of Plaintiff, Elizabeth A. Hatfield.

12. Defendant and its authorized agents maintain records of each call placed to the residence of Elizabeth A. Hatfield by date, time called, duration of call, the identity of Defendant's employee and notes or codes placed upon such record by Defendant's employee.

13. Such records will reflect that Defendant and its authorized agents placed numerous telephone calls to the residence of Elizabeth A. Hatfield, after it appeared that Plaintiff, Elizabeth A. Hatfield, was represented by an attorney and the attorney's name and telephone number were known or could be reasonably ascertained.

COUNT I

VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT

14. Plaintiff incorporates the previous paragraphs as if fully set forth herein.

15. Defendant has engaged in repeated violations of Article 2 of the *West Virginia Consumer Credit and Protection Act*, including but not limited to:

- a) engaging in unreasonable or oppressive or abusive conduct towards Plaintiff, Elizabeth A. Hatfield, in connection with the attempt to collect a debt by placing phone calls to the residence of Elizabeth A. Hatfield in violation of *West Virginia Code §46A-2-125*;
- b) causing the telephone to ring or engaging persons, including Plaintiff, Elizabeth A. Hatfield, in telephone conversations repeatedly or continuously or at unusual times or at times known to be inconvenient, with the intent to annoy, abuse or oppress Plaintiff, Elizabeth A. Hatfield, in violation of *West Virginia Code §46A-2-125(d)*;

c) using unfair or unconscionable means to collect a debt from Plaintiff, Elizabeth A. Hatfield, in violation of *West Virginia Code* §46A-2-128(b) by communication with Plaintiff, Elizabeth A. Hatfield, after it appeared that Plaintiff, Elizabeth A. Hatfield, was represented by an attorney and the attorney's name and address were known or could be easily ascertained;

d) failing to clearly disclose the name of the business entity making a demand for money upon the indebtedness of Plaintiff, Elizabeth A. Hatfield, in violation of *West Virginia Code* §46A-2-127(c).

16. As a result of Defendant and its authorized agents actions, Plaintiff, Elizabeth A. Hatfield, has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued, and otherwise caused indignation and distress.

COUNT II

VIOLATION OF THE WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT

17. Plaintiff incorporates the previous paragraphs as if fully set forth herein.

18. Plaintiff is a "person" as defined by West Virginia Code §61-3C-3(n) as Plaintiff is a "natural person".

19. Defendant is a "person" as defined by West Virginia Code §61-3C-3(n) as Defendant is a "limited partnership, trust association or corporation."

20. Defendant and its authorized agents, with the intent to harass, used an "electronic communication device" as defined by West Virginia Code §61-3C-14a to make contact with Plaintiff after being requested by Plaintiff to desist from contacting him in violation of West Virginia Code §61-3C-14a(a)(2).

21. Plaintiff was injured as a result of the violations of the West Virginia Computer Crime and Abuse Act as set forth above.

22. As a result of the Defendant and its authorized agents' actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

23. Plaintiff seeks compensatory damages for her injuries as provided by West Virginia Code §61-3C-16(a)(1) and punitive damages pursuant to West Virginia Code §61-3C-16(a)(2).

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

24. Plaintiff incorporates the previous paragraphs as if fully set forth herein.

25. The following conduct of Defendant and its authorized agents was atrocious, intolerable and extreme so as to exceed the bounds of decency:

a. Defendant and its authorized agents placed telephone calls to the residence of Plaintiff, Elizabeth A. Hatfield, after Defendant knew that Plaintiff, Elizabeth A. Hatfield, was represented by an attorney, in gross violation of the WVCCPA;

b. Defendant and its authorized agents has adopted policies and procedure without regard to West Virginia law, which violate West Virginia law and are designed to, or have the effect of, inflicting emotional distress upon consumers to coerce the consumers to pay money to Defendant;

c. Insofar as Defendant and its authorized agents' violations of the WVCCPA are deemed to be "willful," pursuant to *West Virginia Code* §46A-5-103(4) such conduct is, as a matter of law, criminal conduct punishable by fine and/or imprisonment;

d. Insofar as Defendant and its authorized agents' conduct caused a phone to ring with the intent to harass, such conduct is criminal pursuant to *West Virginia Code* §61-8-16(a)(3) punishable by fine and/or imprisonment;

e. Insofar as Defendant and its authorized agents' conduct of engaging in telephone conversations with Plaintiff, Elizabeth A. Hatfield, were undertaken with the intent to harass, such conduct is criminal conduct proscribed by *West Virginia Code* §61-8-16(a)(4) punishable by fine and/or imprisonment.

f. Insofar as Defendant and its authorized agents' conduct constituted knowingly allowing a phone under Defendant's control to be used to harass any person, such conduct is criminal conduct proscribed by *West Virginia Code* §61-8-16(b) punishable by fine and/or imprisonment.

26. As a result of Defendant and its authorized agents' actions, Plaintiff, Elizabeth A. Hatfield, has suffered emotional distress.

27. As a result of Defendant and its authorized agents' actions, Plaintiff, Elizabeth A. Hatfield, has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise caused indignation and distress.

COUNT IV

COMMON LAW INVASION OF PRIVACY

28. Plaintiff incorporates the previous paragraphs as if fully set forth herein.

29. Plaintiff, Elizabeth A. Hatfield, had, and has an expectation of privacy to be free from harassing and annoying telephone calls within the confines of her home.

30. The acts of Defendant and its authorized agents in placing telephone calls to the home telephone number of Plaintiff, Elizabeth A. Hatfield, in violation of the WVCCPA, invaded, damaged and harmed the right of privacy of Plaintiff, Elizabeth A. Hatfield.

31. As a result of Defendant and its authorized agents' action, Plaintiff, Elizabeth A. Hatfield, has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise caused indignation and distress.

32. All of the acts of Defendant and its authorized agents alleged herein continue and are continuous acts.

DEMAND FOR RELIEF

Plaintiff demands from Defendant:

- a) Actual damages for the past and future violations of the WVCCPA as authorized by *West Virginia Code* §46A-5-101(1);
- b) Statutory damages in the maximum amount authorized by *West Virginia Code* §46A-5-101(1) as adjusted for inflation pursuant to *West Virginia Code* §46A-5-106;
- c) Plaintiff's cost of litigation, including attorney fees, court costs and fees, pursuant to *West Virginia Code* §46A-5-104;
- d) That the Court conclude, as a matter of law, that Defendant and its authorized agents' violations of the WVCCPA were "willful violations" pursuant to *West*

Virginia Code §46A-5-105 and that the Court order that any alleged debt be canceled;

- e) Plaintiff be awarded damages for Defendant and its authorized agents' violation of *West Virginia Code* § 61-3C-16 as alleged in Count II of the Complaint;
- f) Plaintiff be granted general damages and punitive damages for Defendant and its authorized agents' past and future conduct alleged in Count II, III and IV;
- g) And such other relief as the Court shall deem proper under the circumstances.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas E. McIntire", with a stylized flourish at the end.

Thomas E. McIntire
Attorney for Plaintiff

THIS DOCUMENT PREPARED BY:

Thomas E. McIntire, Esquire
82 1/2 Fourteenth Street
Wheeling WV 26003
WV State Bar No. 2471

EXHIBIT “A”

THOMAS E. McINTIRE & ASSOCIATES, L.C.

82 1/2 Fourteenth Street
Wheeling, West Virginia 26003
Phone: (304) 232-8600 Fax: (304) 232-5719

July 21, 2010

Merrick Bank
PO Box 9201
Old Bethpage, NY 11804

Re: Elizabeth A. Hatfield
Acct # 4120 6103 7315 7155 Visa

Via Certified Mail

To Whom It May Concern:

This law office represents Elizabeth A. Hatfield. Our client received your letter where you claim she owes a debt to you and/or your company. This is notice that your claim is being disputed.

Under the Fair Debt Collections Practices Act (FDCPA), our client has the right to request validation of the debt you say she owes. We are requesting proof of a binding contractual obligation on our client to pay this debt.

Please provide answers to the following questions:

- Original Creditor's Name:
- Name of Debtor:
- Address of Debtor:
- Balance of Account:
- Date you acquired this debt:
- This Debt was: assigned purchased

Please indicate any credit bureaus to which you have reported negative marks:

- Experian _____
- Equifax _____
- TransUnion _____

Please attach copies of:

- Agreement with any of your clients that grants you the authority to collect on this alleged debt:

- Agreement that bears the signature of the alleged debtor wherein he agreed to pay the creditor:
- Any insurance claims been made by any creditor regarding this account:
- Any judgments been obtained by any creditor regarding this account:

Enclosed you will find a release whereby you are authorized to release any and all information and records, and any other type of information relating to our client.

You are to cease and desist all telephone calls and correspondence to our client with regard to the above referenced debt. If you continue to contact our client you might be in violation of the Fair Debt Collection Practice Act and the West Virginia Consumer Protection Act.

Very truly yours,

Thomas E. McIntire & Associates, L.C.

Thomas E. McIntire

TEMcl/df
Elizabeth A. Hatfield

RELEASE AND AUTHORIZATION

RE: Elizabeth A. Hatfield
Social Security Number: xxx-xx-6535
Address: 233 Village Lane, Wheeling, WV 26003

TO: All lenders, mortgage companies, thrifts, credit unions, banks, credit providers

You are hereby authorized to release any and all information and records, and any other type of information relating to me, and to permit the copies of such records or documents to be made available to the law firm of Thomas E. McIntire & Associates, L.C.

I hereby revoke any and all prior authorizations previously issued by me. This Release and Authorization shall remain in effect until I cause to be delivered to you a written cancellation of such Release and Authorization. A photocopy of this Release shall be accepted as an original.

Dated this 21th day of July 2010.


Elizabeth A. Hatfield

STATE OF WEST VIRGINIA)
) SS
COUNTY OF OHIO)

SUBSCRIBED AND SWORN to before me this 21th day of July 2010, by
Elizabeth A. Hatfield.


Notary Public



EXHIBIT “B”

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Merrick Bank
 P O Box 9501
 Old Bethpage NY
 11804

2. Article Number

(Transfer from service label)

7009 2820 0000 5160 3113

PS Form 3811, February 2004

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x

Robert J. [Signature]

Agent

☐ Addressee

B. Received by

[Signature]

Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

EXHIBIT “C”



Legal Department

P.O. Box 171379, Salt Lake City, UT 84117-1379

August 2, 2010

Thomas E. McIntire & Associates, L.C.
82 ½ Fourteenth Street
Wheeling, WV 26003

RE: Account ending in 7155: Elizabeth A. Hatfield

Dear Sir/Madam:

This letter is in response to correspondence we received from you, or your debt relief agency regarding your above referenced Merrick Bank credit account. This not an attempt to collect a debt – we are simply acknowledging that we received your letter and want to communicate what we are going to do as a result:

1. We will cease communication with you regarding your account. However, please understand you will continue to receive monthly information statements;
2. We will close your account (if not already closed); and
3. We will continue to report your account statues to the credit reporting agencies each month.

From our experience, customers pursuing this course of action have either legitimate dispute due to an error on their account or they are having difficulty meeting their obligations and want to negotiate special settlement or payment options. To take advantage of these programs, or discuss your options, you or your agent must call our Special Collections Department at 1-877-487-5598, Monday through Thursday, 8:00 am to 5:00 pm and Friday 8:00 am to 12:00 pm Eastern Standard Time.

Due to privacy concerns and operational constraints it is our policy to not continue to correspond in writing with third-parties.

If we do not hear from you soon, we may refer your case to our attorney network for review which could result in legal action.

Sincerely,
Merrick Bank
Legal Department

P.S. Account validation documents, as you requested, are enclosed. Please be advised that specific areas have been blacked-out to help protect sensitive information.

Enclosures

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit application on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the FDIC Consumer Response Center, 2345 Grand Blvd., Suite 100, Kansas City, MO 64108.

**CIVIL CASE INFORMATION STATEMENT
OF OHIO CIVIL CASES**

In the Circuit Court of Ohio County, West Virginia

BRENDA L. MILLER

I. CASE STYLE

Plaintiff(s)

Elizabeth A. Hatfield

Case No. 14-C-347
Judge Wilson

VS.

Defendant(s)

Days to Answer Type of Service

Merrick Bank
10705 South Jordan Gateway, Suite 200
South Jordan UT 84095

30

Secretary of State
and
Certified Mail

Original and 4 copies

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage Certified Fee Return Receipt Fee (Endorsement Required) Restricted Delivery Fee (Endorsement Required) Total Postage & Fees	\$ <u>SENT</u> <u>12/8/14</u> 14-C-347 Postmark Here <u>COMPLAINT</u> Sent To <u>MERRICK BANK</u> Street, Apt. No., or PO Box No. <u>10705 SO. JORDAN GATEWAY</u> City, State, ZIP+4 <u>SUITE 2000 SO. JORDAN UT 84095</u>
PS Form 3800, August 2006 See Reverse for Instructions	

CIRCUIT COURT
OF OHIO COUNTY
2014 DEC 5 PM 2 28
BRENDA L. MILLER

Plaintiff: Elizabeth A. Hatfield
 Defendant: Merrick Bank

Civil Action No. _____

II. TYPE OF CASE:

- | | |
|---|---|
| <input checked="" type="checkbox"/> General Civil | <input type="checkbox"/> Adoption |
| <input type="checkbox"/> Mass Litigation | <input type="checkbox"/> Administrative Agency Appeal |
| <input type="checkbox"/> Asbestos | <input type="checkbox"/> Civil Appeal from Magistrate Court |
| <input type="checkbox"/> Carpal Tunnel Syndrome | <input type="checkbox"/> Miscellaneous Civil Petition |
| <input type="checkbox"/> Diet Drugs | <input type="checkbox"/> Mental Hygiene |
| <input type="checkbox"/> Environmental | <input type="checkbox"/> Guardianship |
| <input type="checkbox"/> Industrial Hearing Loss | <input type="checkbox"/> Medical Malpractice |
| <input type="checkbox"/> Silicone Implants | |
| <input type="checkbox"/> Other | |
| <input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ | |
| <input type="checkbox"/> Other | |

III. JURY DEMANDED: Yes ☒ No ☐

CASE WILL BE READY FOR TRIAL BY (Month/Year): _____

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMODATIONS DUE TO A DISABILITY OR AGE? If Yes, PLEASE SPECIFY

☒ No

☐ Yes

- ☐ Interpreter or other auxiliary aid for the hearing impaired
☐ Reader or other auxiliary aid for the visually impaired
☐ Spokesperson or other auxiliary aid for the speech impaired
☐ Other: _____

ATTORNEY:

Name: Thomas E. McIntire
Firm: Thomas E. McIntire & Associates, L.C.
Address: 82 1/2 Fourteenth Street
 Wheeling, WV 26003
Telephone: (304) 232-8600
 Signature: 

REPRESENTING:

- ☒ Plaintiff
☐ Defendant
☐ Cross-Complainant
☐ Cross-Defendant

Dated: 12-5-14

SUMMONS

CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

ELIZABETH A. HATFIELD
PLAINTIFF,
VS.

CIVIL ACTION NO. 14-C-347
JUDGE: **RONALD E. WILSON**

MERRICK BANK
DEFENDANT.

To the above named Defendant:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon THOMAS MCINTIRE, plaintiff's attorney, whose address is 82 1/2 FOURTEENTH STREET, WHEELING, WV 26003, an answer including any related counterclaim you may have to the complaint filed against you in the above civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above style civil action.

Brenda L. Miller
BRENDA L MILLER

Dated: December 08, 2014

CLERK OF COURT

BY: *Janine H. Varner*
DEPUTY CLERK

Please Serve:
MERRICK BANK
10705 SO. JORDAN GATEWAY SUITE 2000
SOUTH JORDAN, UT 84095



OFFICE OF THE CIRCUIT CLERK

RECEIPT #: 81295

OHIO
1500 CHAPLINE ST.
WHEELING

DATE RECEIVED: 12/05/2014

TOTAL: \$230.00

RECEIVED FROM: THOMAS MCINTIRE

STYLE OF CASE
ELIZABETH A. HATFIELD
VS.
MERRICK BANK

CASE #: 14-C-347

IN PAYMENT OF FILING FEES
BY Check 2409

BRENDA L MILLER
CLERK OF THE CIRCUIT COURT

BY

A handwritten signature in black ink, appearing to be "B. L. Miller", is written over a horizontal line.

OFFICE OF THE CIRCUIT CLERK

RECEIPT #: 81297

OHIO
1500 CHAPLINE ST.
WHEELING

DATE RECEIVED: 12/05/2014

RECEIVED FROM: THOMAS MCCINTIRE

TOTAL: \$15.00

STYLE OF CASE
ELIZABETH A. HATFIELD
VS.
MERRICK BANK

CASE #: 14-C-347

IN PAYMENT OF FILING FEES
BY Cash

BRENDA L MILLER
CLERK OF THE CIRCUIT COURT

BY

A handwritten signature in black ink, appearing to be 'B. L. Miller', is written over a horizontal line.

14-C-347

CIRCUIT COURT
OF OHIO COUNTY
2014 DEC 16 AM 9 04
BRENDA L. MILLER

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>[Signature]</i></p> <p>C. Date of Delivery <i>[Signature]</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:</p> <p><i>2014 DEC 16 AM 9 04</i> <i>BRENDA L. MILLER</i> <i>MERRICK BANK</i> <i>10705 SO. JORDAN</i> <i>GATEWAY SUITE 2000</i> <i>SO. JORDAN, UT 84095</i> <i>14-C-347</i></p>		<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>PS Form 3811, July 2013</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>7014 0150 0002 0327 3061</p> <p>Domestic Return Receipt</p>	